

1 TENTATIVE RULING

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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

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12 APPLIED UNDERWRITERS, INC. a) No. C07-5129 BZ
13 Nebraska Corporation, and)
14 APPLIED RISK SERVICES, INC.,) ORDER GRANTING MOTION TO
15 a Nebraska Corporation,) DISMISS FOR LACK OF PERSONAL
16) JURISDICTION
17 Plaintiff(s),)
18 v.)
19 COMBINED MANAGEMENT, INC., a))
20 Maine Corporation, et al.,)
21)
22)
23 Defendant(s).)
24)
25)
26)

27 Plaintiffs are insurance brokers and agents that sued
28 defendant, alleging that defendant failed to pay worker's
compensation insurance premiums.¹ Defendant is a human
resources company based in Maine. It contacted Virginia
Surety Company, Inc., an Illinois based company, and inquired
about purchasing worker's compensation insurance for its

27 ¹ All parties have consented to my jurisdiction
28 pursuant to 28 U.S.C § 636(c) for all proceedings, including
entry of final judgment.

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2 employees in Maine. Virginia Surety designated plaintiffs,
3 based in Nebraska, as its agents to broker the insurance
4 policy. Plaintiff Applied Risk Services, Inc. is registered
5 to sell insurance in Maine. Plaintiff Applied Underwriters,
6 Inc. is the parent company. The parties negotiated the terms
7 of the policy over the telephone, via facsimile, and through
8 interstate mail. During all of the negotiations, the
9 individuals negotiating on behalf of plaintiffs were located
10 in San Francisco, California. Defendant's representatives
11 were aware that they were contacting and corresponding with
12 plaintiffs' representatives in California. The insurance was
13 ultimately placed with Virginia Surety, now known as Combined
14 Specialty Insurance Company. The policy was performed in
15 Maine, where the insured's employees were located, or in
16 Nebraska, where claims were processed and payments were
17 received.

18 Plaintiffs initially filed suit in Nebraska and defendant
19 successfully moved to dismiss the complaint for lack of
20 personal jurisdiction.² Plaintiffs then refiled their action
21 in the Northern District of California and defendant has again
22 moved to dismiss for lack of personal jurisdiction.

23 The parties agree that California's long arm statute,
24 California Code of Civil Procedure § 410.10, allows the

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26 ² Both plaintiffs and defendant have filed requests
27 pursuant to Federal Rule of Evidence 201 to take judicial
28 notice of facts contained in declarations filed in the initial
suit before the United States District Court of Nebraska. Both
requests are **GRANTED**.

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2 exercise of personal jurisdiction on any basis provided under
3 the federal constitution. Plaintiffs contend that this court
4 has specific jurisdiction over defendant. In order to find
5 specific jurisdiction: "1) the nonresident defendant must have
6 purposefully availed himself of the privilege of conducting
7 activities in the forum by some affirmative act or conduct; 2)
8 plaintiff's claim must arise out of or result from the
9 defendant's forum-related activities; and 3) exercise of
10 jurisdiction must be reasonable." Roth v. Marquez, 942 F.2d
11 617, 620 - 21 (9th Cir. 1985).

12 "[T]he purposeful availment analysis turns upon whether
13 the defendant's contacts are attributable to 'actions by the
14 defendant *himself*' or conversely to the unilateral activity of
15 another party." Hirsch v. Blue Cross, Blue Shield of Kansas
16 City, 800 F.2d 1474, 1478 (9th Cir.1986) (quoting Burger King,
17 471 U.S. at 475, 105 S.Ct. At 2184) (emphasis in Burger King).
18 Here, defendant never reached out to California. Instead, the
19 Nebraska plaintiffs, at the request of an Illinois insurer,
20 had their California representatives reach out to defendant in
21 Maine. Discussions over the telephone and the use of mail
22 when contacting a forum state are insufficient, alone, to
23 establish personal jurisdiction. See Roth, 942 F.2d at 622.
24 Defendant's telephone conversations and correspondence with
25 plaintiffs in California regarding insurance policies that
26 would be performed in Maine and Nebraska do not amount to
27 purposeful contacts with California such that defendant would
28 "reasonably anticipate being haled into court [here]." World-

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2 Wide Volkswagen Corp. v. Woodson, 44 U.S. 286, 297 (1980).

3 That defendant entered into a contract with Combined
4 Specialty through plaintiffs' representatives located in
5 California does not establish sufficient minimum contacts in
6 this forum. See Burger King Corp. v. Rudzewicz, 471 U.S. 462,
7 478 - 79 (1985). A "'contract' is 'ordinarily but an
8 intermediate step serving to tie up prior business
9 negotiations with future consequences which themselves are the
10 real object of the business transaction.'" Id. quoting
11 Hooperston Canning Co. v. Cullen, 318 U.S. 313, 316 - 17
12 (1943). In a contract case, the sufficiency of minimum
13 contacts is evaluated by examining the following factors:
14 "prior negotiations and contemplated future consequences,
15 along with the terms of the contract and the parties' actual
16 course of dealing." Burger King Corp., 471 U.S. at 479.

17 Plaintiffs contend that jurisdiction is appropriate
18 because the parties had a continuing relationship that
19 contemplated contractual performance in California.
20 Although the terms of the contract were negotiated with people
21 in California, the terms of the contract, the contemplated
22 future consequences of the contract and the parties course of
23 dealings do not support a finding of jurisdiction in this
24 forum. See Burger King Corp., 471 U.S. at 479. Defendant
25 contracted with plaintiffs to obtain worker's compensation
26 insurance for its employees who were located in Maine. In the
27 declaration of Todd Brown that plaintiffs filed before the
28 District Court in Nebraska, plaintiffs admit that they issued

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2 the insurance policies in Nebraska, defendant's payments were
3 sent to Nebraska, the payments were processed in Nebraska,
4 customer services questions were directed to plaintiffs'
5 Nebraska office, claims were submitted to Nebraska, and claims
6 checks were processed, issued and forwarded from plaintiffs'
7 Nebraska office. Nothing before me indicates that the
8 contract for insurance was performed, or contemplated
9 performance, in California.

10 Because I have found that defendant did not establish
11 sufficient minimum contacts with California to constitute
12 purposeful availment, I do not need to address the parties
13 remaining arguments. Defendant's motion to dismiss is **GRANTED**
14 and plaintiffs' case is **DISMISSED**.

15 Dated: November 27, 2007

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17 Bernard Zimmerman
United States Magistrate Judge

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